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June 21, 1996

BRAD E. MUTSCHELKNAUS
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Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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JUN 21 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: CC Docket No. 96-98 --
In the matter of Implementation
of the Local Competition Provisions
of the Telecommunications Act of 1996

Dear Sirs:

Today, I met with Thomas Power and JoAnne Lucanik of the FCC's Cable Bureau regarding issues raised in the above-referenced proceeding. I was accompanied by Riley Murphy, Executive Vice President and General Counsel of American Communications Services, Inc. We discussed the issues referred to in the attached presentation which was made at the meeting.

Sincerely,



Brad E. Mutschelknaus

cc: Thomas Power
JoAnne Lucanik

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AMERICAN COMMUNICATIONS SERVICES, INC.

Suite 100
131 National Business Parkway
Annapolis Junction, Maryland 20701

June 21, 1996

Riley M. Murphy
Executive Vice President
and General Counsel

Brad E. Mutschelknaus
Kelley Drye & Warren

WHO IS ACSI?

- FACILITIES-BASED CAP/CLEC
- 15 OPERATIONAL LOCAL FIBER OPTIC NETWORKS
- 8 ADDITIONAL LOCAL NETWORKS UNDER CONSTRUCTION
- PLANS FOR 30 LOCAL NETWORKS BY 3Q96, AND 50 NETWORKS BY 3Q98.
- INTERCONNECTION NEGOTIATIONS UNDERWAY WITH BELLSOUTH, SBC, US WEST, GTE AND SPRINT/CENTRAL

GENERAL PRINCIPLES

- NONDISCRIMINATORY ACCESS TO ILEC AND UTILITY RIGHTS-OF-WAY IS CRITICAL TO THE EXPEDITIOUS DEPLOYMENT OF CLEC NETWORKS
- EXPLICIT FEDERAL RULES ARE REQUIRED TO IMPLEMENT PROVISIONS OF THE 1996 ACT RELATING TO ACCESS TO RIGHTS-OF-WAY
- SPECIAL RULES ARE NEEDED TO PREVENT UTILITIES FROM FAVORING AFFILIATED ETCs

COMMON ABUSES BY RIGHT-OF-WAY OWNERS

- POLE ATTACHMENT AND CONDUIT ACCESS RATES OFFERED BY INCUMBENTS OFTEN ARE MARKET-BASED, AND FAR EXCEED RATES WHICH WOULD RESULT FROM THE USE OF ANY REASONABLE COST-BASED PRICING METHODOLOGY
- RATES CHARGED TO CLECs COMMONLY ARE 50-400 PERCENT HIGHER THAN RATES CHARGED TO CATV PROVIDERS FOR ACCESS TO THE SAME FACILITIES
- ACCESS HAS SOMETIMES BEEN REFUSED TO BUILDING RISER, VAULT OR SIMILAR SPACE CONTROLLED BY THE ILEC, WHICH IS NECESSARY TO REACH THE DEMARCATION POINT ON THE CUSTOMER PREMISES
- INCUMBENTS HAVE CONTENDED THAT POLES LACK SUFFICIENT CAPACITY TO AFFORD ACCESS TO CERTAIN COMPETITORS, EVEN WHEN SPACE IS RESERVED FOR THEIR OWN FUTURE USE, OR OTHER (FAVORED) CARRIERS ARE GIVEN ACCESS

RECOMMENDED RIGHT-OF-WAY REQUIREMENTS

- RULES SHOULD APPLY EQUALLY TO ALL ILECs, ELECTRIC UTILITIES, OTHER INCUMBENT UTILITY COMPANIES *AND* THEIR AFFILIATES
- APPLICANTS FOR ETC STATUS MUST AFFIRMATIVELY DEMONSTRATE THAT BOTH THEY *AND* THEIR AFFILIATES PROVIDE ACCESS TO RIGHT-OF-WAY TO ALL COMPETITORS ON A NONDISCRIMINATORY BASIS
- ILECs AND UTILITIES MUST RESPOND TO BONA FIDE REQUESTS FOR ACCESS TO POLES, DUCTS, CONDUIT AND RIGHT-OF-WAY WITHIN 10 BUSINESS DAYS OF RECEIPT, WITH WRITTEN REASONS STATED FOR ANY REFUSAL TO PROVIDE ACCESS, AND ACCESS GENERALLY SHOULD BE MADE AVAILABLE WITHIN 30 DAYS THEREAFTER
- ACCESS MUST BE PROVIDED TO *ALL* POLES, DUCTS, CONDUITS AND RIGHT-OF-WAY *OWNED OR CONTROLLED* BY THE INCUMBENT, INCLUDING BUILDING RISERS AND VAULT ACCESS/BUILDING ENTRANCE WHERE SUCH FACILITIES ARE UNDER THE INCUMBENT CARRIER'S CONTROL

- ACCESS MUST BE PROVIDED ON IDENTICAL TERMS (INCLUDING RATES) TO ALL CLECs, CATV PROVIDERS AND OTHER TELECOMMUNICATIONS PROVIDERS
- ACCESS MUST BE PROVIDED ON THE SAME TERMS THAT THE ILEC OR UTILITY APPLIES TO ITSELF OR AN AFFILIATE FOR SIMILAR USES
- ALL AGREEMENTS EXECUTED PRIOR TO THE 1996 ACT MAY BE VOIDED BY THE CLEC, AND RENEGOTIATED SUBJECT TO THE TERMS OF THE 1996 ACT
- WHEN ACCESS IS REFUSED, THE ILEC OR UTILITY HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT "INSUFFICIENT CAPACITY" EXISTS OR THAT ACCESS WAS DENIED FOR "REASONS OF SAFETY, RELIABILITY AND GENERALLY APPLICABLE ENGINEERING PURPOSES"
- RULES SHOULD CLARIFY THAT SUFFICIENT CAPACITY EXISTS TO PROVIDE COMPETITIVE ACCESS IF ANY PRESENTLY UNUSED CAPACITY EXISTS, THAT SPACE MAY NOT BE RESERVED BY THE ILEC OR UTILITY FOR THEIR OWN FUTURE USE, AND WHERE SPACE IS LIMITED, AVAILABLE SPACE MUST BE ALLOCATED EQUITABLY AMONG ALL TELECOMMUNICATIONS CARRIERS REQUESTING ACCESS

- DENIALS FOR REASONS OF SAFETY, RELIABILITY AND ENGINEERING PURPOSES MUST REST ON GENERALLY ACCEPTED AND PUBLISHED INDUSTRY ENGINEERING CRITERIA OR TECHNICAL STANDARDS, AND REASONS FOR DENIAL MUST BE APPLIED CONSISTENTLY TO ALL TELECOMMUNICATIONS CARRIERS, INCLUDING THE ILEC OR UTILITY AND ITS AFFILIATES
- COMPLAINTS OR PETITIONS ALLEGING VIOLATIONS OF THESE REQUIREMENTS SHOULD BE RESOLVED BY THE FCC WITHIN 90 DAYS OF FILING, AND THE ILEC OR UTILITY SHOULD HAVE THE BURDEN OF PROVING THAT THE RATES, TERMS AND CONDITIONS OF ACCESS ARE JUST, REASONABLE AND NONDISCRIMINATORY
- ALL ILECs AND UTILITIES SHOULD FILE PERIODIC REPORTS OF THE NUMBER OF RIGHT-OF-WAY AGREEMENTS ENTERED BY THEM, AND DESCRIPTIONS OF THE BASIC TERMS OF EACH SUCH AGREEMENT

SPECIAL REQUIREMENTS RECOMMENDED
FOR UTILITIES/ETCs

- MUCH AS AN APPLICANT MUST CERTIFY ITS COMPLIANCE WITH THE REQUIREMENTS OF THE ANTI-DRUG ABUSE ACT OF 1988, THE APPLICANT'S UTILITY AFFILIATE SHOULD BE REQUIRED TO CERTIFY THAT IT HAS AND WILL COMPLY WITH SECTION 703 OF THE 1996 ACT BY PROVIDING NONDISCRIMINATORY ACCESS TO ITS POLES, DUCTS, CONDUIT AND RIGHT-OF-WAY TO ALL TELECOMMUNICATIONS CARRIERS
- ETCs SHOULD BE REQUIRED TO PROVIDE COPIES TO ANY REQUESTING TELECOMMUNICATIONS CARRIER OF ANY AGREEMENT BETWEEN THE ETC AND ANY UTILITY AFFILIATE THEREOF WHICH AFFORDS THE ETC ACCESS TO ANY UTILITY POLES, DUCTS, CONDUIT OR RIGHT-OF-WAY
- AN APPLICANT'S ETC STATUS SHOULD BE EXPRESSLY CONDITIONED ON THE CONTINUING WILLINGNESS OF THE ETC'S UTILITY AFFILIATE TO PROVIDE NONDISCRIMINATORY ACCESS TO ITS POLES, DUCTS, CONDUIT AND RIGHTS-OF-WAY, AND ETCs SHOULD BE EXPRESSLY FOREWARNED THAT THEIR ETC STATUS CAN BE REVOKED IF THEIR UTILITY AFFILIATE FAILS TO SATISFY THIS OBLIGATION